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Technology and Media Center

"Providing support to ensure success for ALL students, staff and community."

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

July 19, 2007

Request for Review of a decision made by USAC – CC Docket No. 02-6

Billed Entity Number: 143257

Funding Year: 2006 (7/1/2006 – 6/30/2007)

Form 471 Number: 529927

FRNs: 1462542, 1462694, 1462920, 1463027

Decision being appealed: Administrator's Decision Letter dated July 12, 2007 (Attachment 1)

Applicant: Gallup-McKinley County School District
700 S Boardman Ave
P.O. Box 1318
Gallup, NM 87305-1318

Contact Person George McDonald
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I am writing to request review by the Commission of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) to deny the FRNs cited above for the reason: "Given Program demand, the funding cap will not provide for Internal Connections and/or Basic Maintenance of Internal Connections at your approved discount level to be funded." The approved discount level for these FRNs is 85%.

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SLD funded Internal Connections and Basic Maintenance of Internal Connections for Funding Year (FY) 2006 at 86%, and, just with the wave issued on July 12, 2007, began denying pending Priority 2 requests at 85%. There are reports that there had been \$53 million in pending Priority 2 requests at 85%. It seems clear to us that, based on a number of factors, approved Priority 2 requests at 85% in FY 2006 could have been and still should be funded. Specifically:

- As of July 13, 2007, after denying pending FY 2006 Priority 2 requests for lack of funding, SLD's Web site shows total commitments of only \$1.951 billion dollars. The FY 2006 cap is \$2.25 billion. Therefore, there is nearly \$300 million that has not yet been used for in-window funding requests. The most recent USAC Quarterly FCC Filing¹ reports SLD administrative expenses in the 3rd Quarter 2007 (the first quarter of FY 2007) of \$18.71 million. That number suggests total administrative expenses for FY 2006 of about \$75 million, leaving nearly \$225 million for pending requests and appeals. Given that the funding year is over and that SLD has already issued at least 14 waves of appeals for FY 2006, a reserve equal to 11.5% of all committed requests seems unreasonably high.
- On June 11, 2007, the FCC issued a Public Notice in which it announced that \$650 million in unused Schools and Libraries funds would be carried forward from FYs 2001, 2002, 2003, and 2004 into FY 2007, increasing the annual \$2.25 billion cap for that funding year. If needed, the Commission could have carried forward some of that \$650 million into FY 2006 to fund pending Priority 2 requests at 85%. On June 28, 2007, SLD began issuing Funding Commitment Decision Letters (FCDLs) for FY 2007 with commitments for Priority 2 requests at 90%. Since the 2007 Priority 2 threshold has not been lowered below 90%, it would appear that the Commission could still amend its instructions to USAC and dedicate some portion of that carry-forward amount to FY 2006.
- The \$650 million that the Commission carried forward from prior years into FY 2007 was based on funding year-by-funding year reports on unused funds in the most recent USAC Quarterly FCC Filing to the FCC referenced above. USAC reports on unused funds each quarter. Traditionally unused funds increase over time as pending requests are denied, invoice deadlines pass, funds are returned, etc., until they are carried forward to a future year. Strangely, the estimate of unused funds did not change at all from the First Quarter 2007 Filing issued on November 2, 2006, to the Third Quarter 2007 Filing issued on May 2, 2007. We believe that a careful review of funding year-by-year would reveal additional unused funds from FYs 2002, 2003, and 2004, since the most recent Quarterly Filing is showing contingency reserves for pending appeals and invoice deadline extension requests ranging from \$267 million for FY 2002 to \$575 million for FY 2004 – amounts that are not yet being considered unused years after the close of those funding years. Those reserves are much larger than the contingency reserve for FY 2005 – a much more recent year – which is only \$173 million.

¹ Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter 2007, Universal Service Administrative Company, May 2, 2007.

Gallup-McKinley County Schools, like the other applicants denied funding with 85% discounts, is a poor district – indeed, that is why we qualify for such a high discount. Three of the four of our denied Priority 2 funding requests are for Basic Maintenance of Internal Connections – expenses that the District would have to bear without E-rate support based on USAC's decision. We do not have the option, as we do with new equipment installations, to defer the purchase and hope for funding in a future funding year. Congress intended that E-rate would provide support first for the neediest schools and libraries. The decision in this case to deny funding for Priority 2 requests at 85% when there clearly are funds available for funding those requests is inconsistent with congressional intent. Further, since the \$650 million carried forward into FY 2007 will likely mean an Internal Connections denial threshold for FY 2007 significantly below 85%, the decision not to fund 85% in FY 2006 undermines the Commission's own rules of priority – funding much lower discounts in FY 2007 with carry-forward funds that could be used to fund Priority 2 requests in FY 2006 at 85%.

We also note that the Commission's rules call for prorating funding at a particular discount band if funds are not sufficient to fully fund the band.² There was a several-week delay from action by the Schools & Libraries Committee of the USAC Board approving denials at 85% and issuance of the denials. SLD officials said publicly that they had tried hard to fund Priority 2 at 85% but were unable to do so. If that means, as we suspect, that SLD could have funded a portion of the pending requests at 85%, SLD should have done that in accordance with your rules. In the case of our Basic Maintenance requests in FY 2006, which total \$2.67 million in discounted dollars, prorated funding would have been much preferable to no funding at all.

We ask the Commission to review available funds in FY 2006 and other years and take whatever steps are necessary to fully fund approved Priority 2 requests at 85% for FY 2006. If that is not possible for any reason, we ask that you direct USAC to pro-rate funding for these requests in lieu of denial.

Sincerely,



Esther V. Macias
Acting Superintendent
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² 47 CFR 54.507(g)(iv)